FILED
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NO. 89-1982

IN THE SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1990

JOHN MONROE, ET AL

PETITIONERS

V.

CITY OF WOODVILLE
MISSISSIPPI, ET AL

RESPONDENTS

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

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THE QUESTIONS PRESENTED FOR REVIEW

1. Are minority voters politically cohesive when at least 70% of minority voters consistently vote as a bloc for the minority preferred candidate in contested political elections?

2. Is the test for determining legally significant white bloc voting as announced in *Thornburg v. Gingles*, 478 U. S. 30 (1986), the same in jurisdictions where white voters constitute a minority of the voting age population as in jurisdictions where white voters constitute a majority of the voting age population?

3. Does a factual finding that significant numbers of minority voters cross-over and vote for the candidate not preferred by the overwhelming majority of the minority voters preclude a finding of racial vote dilution?

LIST OF PARTIES

The parties to the proceeding below were the appellants JOHN MONROE, JIMMY HARRIS, DORA MONROE, LARRY JOHNSON and all others similarly situated and the appellees CITY OF WOODVILLE, MISSISSIPPI, RON SENKO, IN HIS CAPACITY OF MAYOR, AND CHARLES JAMES, GARY D'QUILLA, TIM SESSIONS, AS MEMBERS OF WOODVILLE, MISSISSIPPI BOARD OF ALDERMAN, JOE TOWNSEND, MARY MAGEE, AND HERBERT CURRY, AS MEMBERS OF THE CITY ELECTION COMMISSION AND FRANCES TOWNSEND AS CITY CLERK.

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REFERENCE TO OFFICIAL OPINIONS BY LOWER COURTS

Official decisions of lower courts are reported as follows: *Monroe v. City of Woodville,* 897 F. 2d 763 (5th Cir. 1990); *Monroe v. City of Woodville,* 881 F. 2d 1327 (5th Cir. 1989); *Monroe v. City of Woodville,* 688 F. 2d 255 (S.D. Miss. 1988); *Monroe v. City of Woodville,* 819 F. 2d 507 (5th Cir. 1987); *Monroe v. City of Woodville,* 636 F. Supp. 423 (S.D. Miss. 1986).

STATEMENT OF THE GROUNDS FOR INVOKING JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sections 1254 and 2101(c) and 42 U.S.C. Section 1973. The questions involved are of substantial importance. See *Thornburg v. Gingles,* 478 U. S. 30 (1986), compare *Frisdy v. Schultz,* 487 U.S. ____ (1988).

STATUTES INVOLVED

This case involves 42 U.S.C. Section 1973.

STATEMENT OF THE CASE

Petitioners rely upon the statement of the case as previously set out in the Petition for Writ of Certiorari.

ARGUMENT I

1. THIS CASE DEPARTS FROM SETTLED LAW.

Respondents assert that the instant case applies settled law. However, this assertion is not totally correct. The case appears, on its face, to apply settled law. But, it actually eviscerates this court's holding in *Thornburg v. Gingles,* 478 U.S. 30 (1986), the only case decided by this court interpreting Section 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973, as amended by Congress in 1982. In *Thornburg,* this court held:

> "[T]he 'right' question, as the Report emphasizes repeatedly, is whether as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political process and *to elect candidates of their choice."* (Emphasis added).

Thornburg v. Gingles, supra at 44.

The right question in the instant case is whether as a result of the at-large method of election of a multi-member body blacks in Woodville have an equal opportunity to participate in the political processes and *to elect candidates of their choice.* The right question does not concern the success of black candidates, after the filing of a vote dilution lawsuit, who are the choices of the white political establishment. *Thornburg v. Gingles, supra,* at 76. As stated in *Zimmer v. McKeithen,* 485 F. 2d 1297, 1307 (5th Cir. 1973) (en banc) and cited with approval in *Thornburg v. Gingles, supra,* at 77 n. 37:

> "[W]e cannot endorse the view that the success of black candidates at the polls necessarily foreclose the possibility of dilution of the black vote. Such success might, on occasion, be attributable to the work of politicians, who, apprehending that the support of a black candidate would be politically expedient, campaign to insure his election. Or such success might be attributable to political support motivated by different consideration — namely that election of a black candidate will thwart successful challenges to electoral schemes

on dilution grounds. In either situation, a candidate could be elected despite the relative political backwardness of black residents in the electoral district."

The fact that Woodville now has two black aldermen, the second black becoming an alderman by virtue of appointment by the white political establishment, does not defeat petitioners' vote dilution claim.[1]

2. THE CIRCUITS ARE SPLIT ON THE DEFINITION OF POLITICAL COHESIVENESS.

Respondents assert that all circuits have applied *Thornburg v. Gingles, supra,* and the "Zimmer" factors, *Zimmer v. McKeithen, supra,* when interpreting the command of the Voting Rights Act. With this broad assertion, petitioners do not disagree. But what respondents fail to comprehend is that the Fifth Circuit has altered the functional definition of political cohesion. The Fifth Circuit's definition of political cohesiveness is not consistent with this court's illumination of the concept as articulated in *Thornburg* nor is it consistent with other circuits.[2] Political cohesiveness is the most important factor in a vote dilution claim because it is defined by minority racial bloc voting. *Thornburg v. Gingles, supra,* 478 at 56; 48 n. 15.

[1]The fact that a second black alderman was elected, after first being appointed to serve the unexpired term of a white alderman who had resigned, was not before the district court. This fact was revealed at oral argument on petitioners' appeal to the Fifth Circuit Court of Appeals. This fact should not have been considered by the Fifth Circuit nor this Court without a fuller development of the record and without the district court first passing on the developed record.

[2]A three-judge district court in the 8th Cir. held that "there is racially polarized voting in races for the Arkansas State Legislature, that black voters usually vote cohesively, as a unit..." The court here clearly equates political cohesiveness with racially polarized voting. *Jeffers v. Clinton,* 731 F. Supp. 196, 209 (E.D. Ark. 1989) (three-judge court), Supreme Court appeal filed May 24, 1989, Docket No. 89-2008. See also; *Solomon v. Liberty County, Fla.*, 899 F. 2d 1012 (11th Cir. 1990); *Collins v. City of Norfolk, Va.*, 883 F. 2d 1232 (4th Cir. 1989); and *Gomez v. City of Watsonville,* 863 F. 2d 1407 (9th Cir. 1988).

CONCLUSION

On the basis of the foregoing facts and authorities, petitioners respectfully submit that their petition for a writ of certiorari should be granted.